



# **State of Washington Office of Insurance Commissioner**

**Mike Kreidler, Insurance Commissioner**

## **A Report to the Insurance Commissioner: Medical Malpractice Closed Claim Study**

**Claims Closed from July 1, 1994 through June 30, 2004**

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## Introduction

In October 2004, the Commissioner met with representatives of five insurers, comprising over ninety percent of the admitted medical malpractice market for physicians and surgeons, to determine the types of data that would be available to conduct a study of closed claims. After discussions with these insurers, a data call was issued in November 2004 for claims closed from July 1, 1994 through June 30, 2004.

There are two primary pieces of data analyzed in this study:

***Paid Indemnity:*** This is the amount of compensation paid to a claimant by an insurer.

***Defense and Cost Containment Expenses (DCC):*** These are expenses allocated to a specific claim to defend an insured, and include costs such as court costs and fees paid to defense attorneys and expert witnesses. These expenses do not include the internal costs to operate a claims department.

The insurers that participated in this study closed 10,073 medical malpractice claims during the ten-year period ending June 30, 2004. Each closed claim covered one defendant. If a claimant filed a claim against more than one doctor due to an allegation of malpractice, each of these claims was analyzed separately.

## Limitations:

1. This study is based entirely on historical paid claim data, and is intended to reveal whether changes to claim payment patterns have occurred over time. This study does not evaluate past or current medical malpractice rates, nor is it predictive of future trends in medical malpractice insurance rates.
2. The insurers that participated in this study represent only a limited share of the medical malpractice insurance market.
3. The five participating carriers operate in the admitted insurance market. Riskier physicians or specialties may be insured by the surplus lines market, and their paid claim experience is not represented in this study.
4. Self-insurers that provide malpractice insurance for physicians, such as health care facilities and medical cooperatives, were not included in this study. Under current law, the Commissioner cannot offer confidentiality to data provided by self-insurers.
5. The size of average indemnity payments chart understates the severity (average size) of settlements related to some incidents of medical malpractice, because some claimants collect settlements from more than one defendant. Due to data limitations, we cannot estimate average paid indemnity for settlements involving more than one defendant.

6. Changes in paid claims can result from business decisions made by insurance companies. For example, an insurance company may decide to increase or decrease its overall market share or enter a new market to expand its business. This study cannot evaluate the impact of business decisions on paid claim patterns.

## Key Findings

1. The total number of closed claims for the ten-year period ending June 30, 2004 was 10,073.
  - 2,737 claims, or 27.2 percent, were closed with an indemnity payment to a claimant.
  - 6,135 claims, or 60.9 percent, were closed with allocated defense costs, which are referred to as defense and cost containment expenses (DCC) throughout the report.
  - 3,248 claims were closed without either defense costs or paid indemnity.
2. Indemnity payments to claimants: Over the ten-year period, \$499,797,004 was paid on 2,737 claims.
  - Average paid indemnity increased at an annual rate of 4.1 percent. The number of paid claims increased at an annual rate of 4.9 percent. Total paid indemnity, which is a combination of the average paid indemnity and the number of paid claims, rose at an annual rate of 9.1 percent over the ten-year period.
  - Claims with paid indemnity over \$1 million represent 1.6 percent of paid claims, but account for 18.9 percent of total paid indemnity over the ten-year period. When data are sorted into five-year periods (1995-1999 and 2000-2004), both the number and cost of large claims remained fairly consistent over the two periods.
  - 83% of all claims with paid indemnity were closed within three years of the date of notice to the insurer.
3. Defense costs: Over the ten-year period, \$133,109,201 was paid on 6,135 claims.
  - Average defense costs increased by an annual rate of 6.4 percent. The number of claims with defense costs increased at an annual rate of 5.3 percent. The total defense and cost containment expenses, which is a combination of the average defense cost and the number of claims with defense costs, rose at an annual rate of 12.0 percent over the ten-year period.
  - Claims with \$0 paid indemnity represent 66.6 percent of claims with defense costs, and account for 47.5 percent of defense costs over the ten-year period. When data are sorted into five-year periods (1995-1999 and 2000-2004), both percentages remained fairly consistent over the two periods.

4. Claims closed with indemnity payments to claimants are most often settled by negotiation between the claimant and the insurer.
  - Negotiated settlements comprise 74.8 percent of claims with paid indemnity and 65.1 percent of the total paid indemnity.
  - Alternative dispute resolution (arbitration, mediation, private trial) comprise 16.3 percent of claims with paid indemnity and 27.3 percent of the total paid indemnity.
  - Claims with a plaintiff verdict comprise 1.8 percent of paid claims, and result in 7.0 percent of total paid indemnity. There were a total of 50 claims with a plaintiff verdict over the ten-year period.
  - The remainder of the claims with paid indemnity, which represent 7.2 percent of paid claims and 0.6 percent of paid indemnity, are settled because a court has ruled against the plaintiff, the plaintiff does not pursue the claim, or for other reasons.
5. When paid indemnity data are sorted by classification of physician or surgeon, there were no meaningful findings. The greatest percentage of payments was made to the “All Other” category. The size of this category may be due to improper coding when physician coverage is written in conjunction with hospital coverage.
6. Cause of loss data could not be sorted into categories due to inconsistent coding and descriptions used by the participating insurers. Consequently, this report does not include a cause of loss analysis.
7. This report has many limitations, and those limitations can be linked to the accuracy and volume of data available for analysis. Uniform data reporting standards applied to all entities that indemnify claimants for costs associated with incidents of actual or alleged medical malpractice would result in more complete and accurate findings. In this respect, we agree with the United States General Accounting Office (now called the Government Accountability Office) when it recommended that insurance regulators:
  - Identify the types of data needed to analyze the medical malpractice market, and
  - Begin collecting such data in a form that would allow appropriate analysis.

## **Description of Analysis**

### **Data Elements**

These data were requested from the participating insurers:

1. NAIC company code (if there are affiliated companies that sell medical malpractice insurance).
2. Policy type (claims-made or reporting endorsement).
3. A description of the classification of physician or surgeon.
4. A company identifier for the claim (for auditing purposes).
5. Date of loss.
6. Date the insurer was first notified of the claim.
7. Date the claim was closed.
8. Coverage limit that applies to the claim.
9. Deductible (if applicable).
10. Paid indemnity on the claim.
11. Paid allocated loss adjustment expense per claim (also called “Defense and Cost Containment Expenses”).
12. Amount recovered by the insurer through subrogation or reimbursement.
13. The reason the claim was closed (verdict, arbitration, mediation, negotiated settlement).
14. Description of the cause of loss (by code or free form description).

### **Yearly Comparisons**

Claims were sorted by the fiscal year (July 1 through June 30) in which they were closed, in order to identify trends in claim activity, paid indemnity and defense and cost containment (DCC) expenses. The analysis identified changes in the number of claims closed, indemnity payments, DCC expenses, payments by size of loss, and claim-closing patterns (the length of time a claim remains open). All annual trends in this report were derived by fitting exponential curves to the data.

### **Period Comparisons**

In some cases, there were insufficient data in each fiscal year for meaningful analysis. In these cases, the data were organized into two five-year periods: Fiscal years 1995-1999 and fiscal years 2000-2004.

## **Payments by Specialty**

Paid indemnity is displayed by specialty for the entire ten-year period, and also divided into five-year segments to identify trends. Data are not displayed on an annual basis because the volume of data in many classifications is very sparse.

## **Type of Settlement**

Data were sorted by the major categories of settlement types.



## Summary Comparisons

### Yearly Comparison of Closed Claim Data

Table 1 displays summary closed claim data for the ten-year period ending June 30, 2004 for comparison purposes.

Closed Claim Summary								
Fiscal Year Ending	Total Number of Closed Claims	Number of Claims with DCC or Paid Indemnity	Percent of Claims with DCC or Paid Indemnity	Defense & Cost Containment Expenses (DCC)	Paid Indemnity	DCC/Paid Indemnity	Average DCC per Closed Claim	Average Indemnity per Closed Claim
June-95	812	491	60.5%	\$7,219,699	\$29,300,748	24.6%	\$8,891	\$36,085
June-96	819	545	66.5%	\$7,084,049	\$33,074,904	21.4%	\$8,650	\$40,384
June-97	886	602	67.9%	\$9,898,246	\$39,171,350	25.3%	\$11,172	\$44,211
June-98	960	634	66.0%	\$12,003,734	\$54,189,387	22.2%	\$12,504	\$56,447
June-99	1,106	729	65.9%	\$15,070,891	\$48,287,780	31.2%	\$13,626	\$43,660
June-00	1,051	706	67.2%	\$13,078,957	\$46,606,960	28.1%	\$12,444	\$44,345
June-01	1,128	733	65.0%	\$14,504,810	\$59,289,137	24.5%	\$12,859	\$52,561
June-02	1,213	805	66.4%	\$15,591,447	\$53,957,229	28.9%	\$12,854	\$44,482
June-03	1,078	804	74.6%	\$18,738,065	\$69,511,863	27.0%	\$17,382	\$64,482
June-04	1,020	776	76.1%	\$19,919,302	\$66,407,645	30.0%	\$19,529	\$65,106
Total	10,073	6,825	67.8%	\$133,109,201	\$499,797,004	26.6%	\$13,214	\$49,617

The total DCC expense was \$133,109,201, and the total paid indemnity was \$499,797,004. Overall, the ratio of DCC expenses to paid indemnity was 26.6% for the period. The average indemnity and average DCC expense in Table 1 are based on the total number of closed claims. Subsequent tables will show averages based on claims on which payments are made.

The total number of closed claims for the ten-year period ending June 30, 2004 was 10,073. Of that total, 6,825 claims, or 67.8%, were closed with defense and cost containment (DCC) expense and/or paid indemnity. The remainder of the claims (3,248) were closed without DCC expense or paid indemnity. DCC expense represents costs allocated to a specific claim, such as the expense to hire an outside attorney or expert witnesses. Claims closed without DCC expense or paid indemnity were investigated by internal claims department staff. After investigation, these claims were likely denied due to either insufficient evidence of negligence or lack of coverage under the terms of the policy.

The total number of closed claims increased at an annual rate of 3.7% over the ten-year period, increasing at a faster pace during the first five years of the period, and then remaining relatively flat. The number of claims closed with DCC expenses and/or paid indemnity increased at an annual rate of 5.4% over the ten-year period. This is, in part, a reflection of the increase in the total number of claims closed. DCC expenses increased at a faster annual pace than paid indemnity over the ten-year period (12.0% to 9.1%).

Table 2 displays a summary paid claims data and DCC expenses for claims-made policies and extended reporting endorsements.

<b>Claims by Type of Coverage: Paid Indemnity</b>							
<b>Type of Claims Made Coverage</b>	<b>Total Closed Claims</b>	<b>Claims with Paid Indemnity</b>	<b>Percent with Paid Indemnity</b>	<b>Total Paid Indemnity</b>	<b>Percent of Paid Indemnity</b>	<b>Average Paid Indemnity (all Claims)</b>	<b>Average Paid Indemnity (Paid Claims)</b>
Claims-Made Policy	9,694	2,603	26.9%	\$478,242,711	95.7%	\$49,334	\$183,728
Reporting Endorsement	379	134	35.4%	\$21,554,293	4.3%	\$56,871	\$160,853
<b>Total</b>	<b>10,073</b>	<b>2,737</b>	<b>27.2%</b>	<b>\$499,797,004</b>	<b>100%</b>	<b>\$49,617</b>	<b>\$182,608</b>

<b>Claims by Type of Coverage: Defense and Cost Containment Expense</b>							
<b>Type of Claims Made Coverage</b>	<b>Total Closed Claims</b>	<b>Claims with DCC Expense</b>	<b>Percent with DCC Expense</b>	<b>Total DCC Expense</b>		<b>Average DCC Expense (all Claims)</b>	<b>Average DCC Expense (Claims with DCC)</b>
Claims-Made Policy	9,694	5,846	60.3%	\$127,380,274	95.7%	\$13,140	\$21,789
Reporting Endorsement	379	289	76.3%	\$5,728,927	4.3%	\$15,116	\$19,823
<b>Total</b>	<b>10,073</b>	<b>6,135</b>	<b>60.9%</b>	<b>\$133,109,201</b>	<b>100%</b>	<b>\$13,214</b>	<b>\$21,697</b>

All of the policies issued by the insurers provided claims-made coverage. Under a claims-made policy, the claim for injury must be made during the policy period. This type of policy is commonly issued on “long-tail” risks – those risks where claims are frequently presented long after the incident has occurred. Claims-made policies provide more certainty to insurers when they set prices, because they can match the claims to the policies in force and develop more accurate premiums for future coverage that they sell. Medical malpractice insurers offer extended reporting endorsements when coverage is cancelled. These endorsements allow claims to be reported after the policy period.

## Analysis of Claims Closed with Paid Indemnity

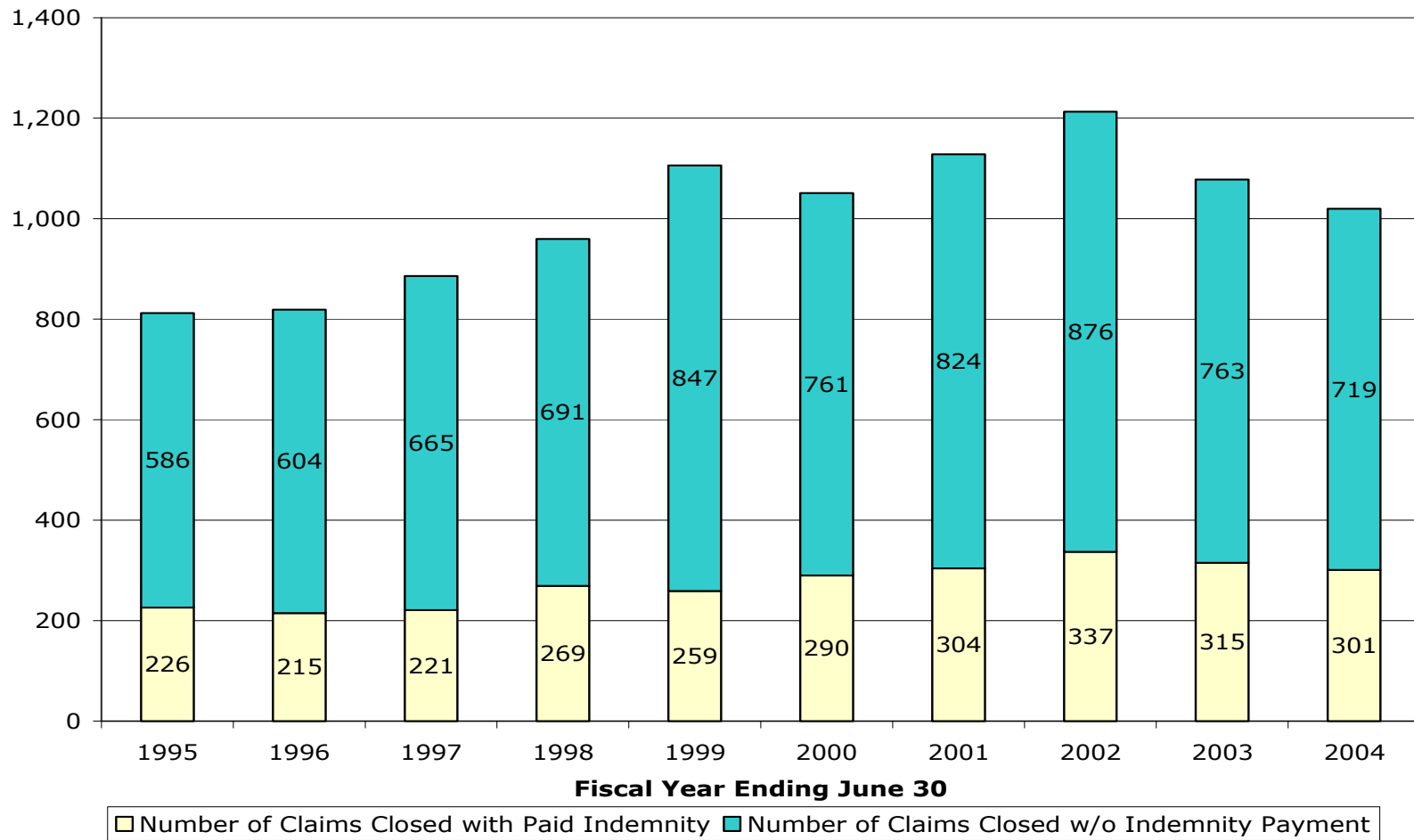
### Comparison of Claims Closed with Paid Indemnity

Table 3 compares claims closed with paid indemnity.

<b>Comparison of Claims Closed with Paid Indemnity</b>						
<b>Fiscal Year Ending</b>	<b>Total Number of Closed Claims</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>Number of Claims w/o Paid Indemnity</b>	<b>Average Indemnity per Paid Claim</b>	<b>Total Paid Indemnity</b>
June-95	812	226	27.8%	586	\$129,649	\$29,300,748
June-96	819	215	26.3%	604	\$153,837	\$33,074,904
June-97	886	221	24.9%	665	\$177,246	\$39,171,350
June-98	960	269	28.0%	691	\$201,448	\$54,189,387
June-99	1,106	259	23.4%	847	\$186,439	\$48,287,780
June-00	1,051	290	27.6%	761	\$160,714	\$46,606,960
June-01	1,128	304	27.0%	824	\$195,030	\$59,289,137
June-02	1,213	337	27.8%	876	\$160,110	\$53,957,229
June-03	1,078	315	29.2%	763	\$220,673	\$69,511,863
June-04	1,020	301	29.5%	719	\$220,623	\$66,407,645
Total	10,073	2,737	27.2%	7,336	\$182,608	\$499,797,004

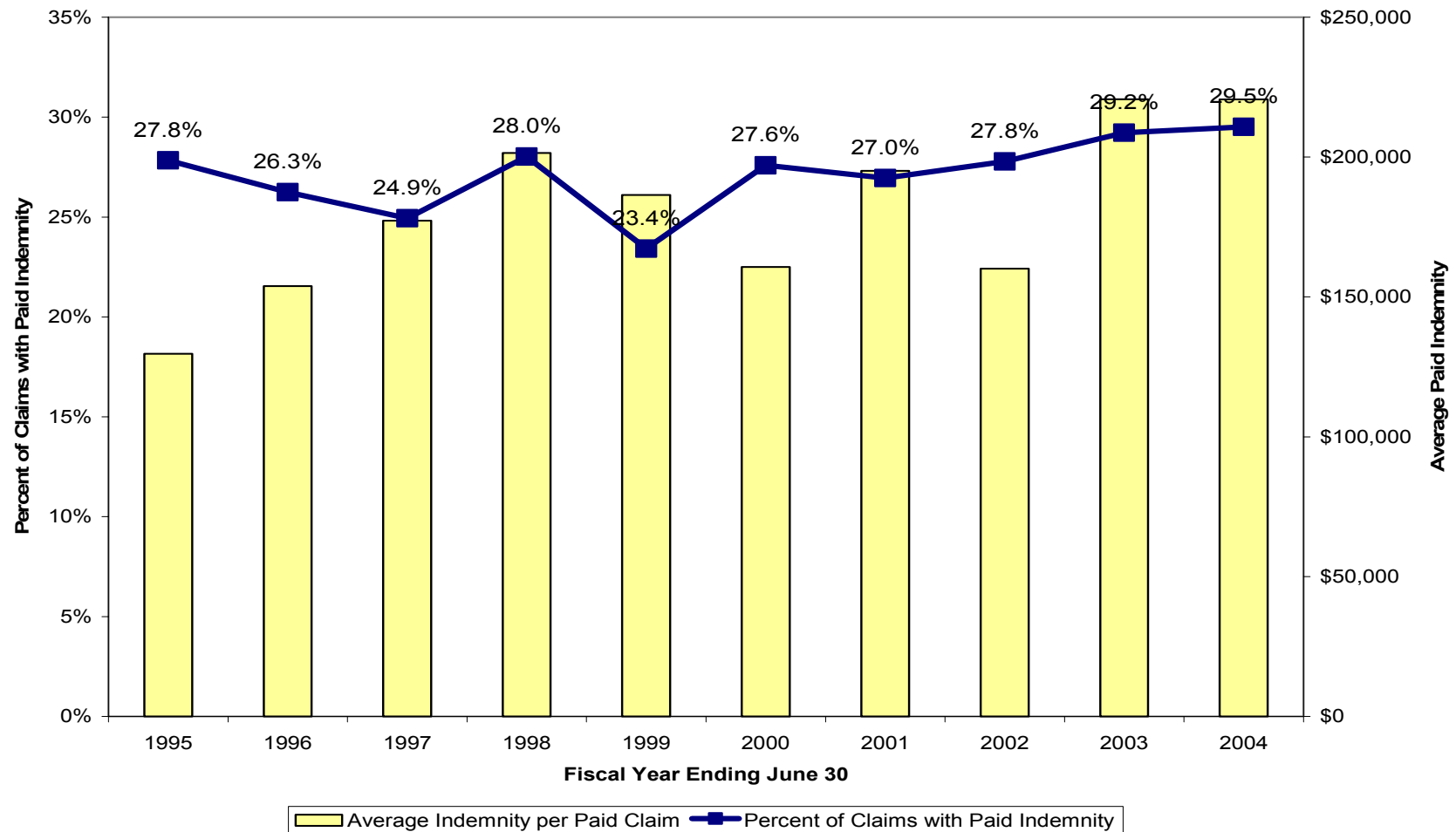
There were 10,073 medical malpractice claims closed by insurers during the ten-year period ending June 30, 2004. Less than one third of these claims resulted in an indemnity payment. Total paid indemnity rose at an annual rate of 9.1% over this period. Average paid indemnity increased by less than half that amount at an annual rate of 4.1%. The difference can be attributed to a rise in the number of claims closed with paid indemnity over this ten-year study period. While the number of claims with paid indemnity rose over this period, the percentage of claims with paid indemnity remained relatively constant.

Chart 3-1: Compares claims closed with and without paid indemnity.



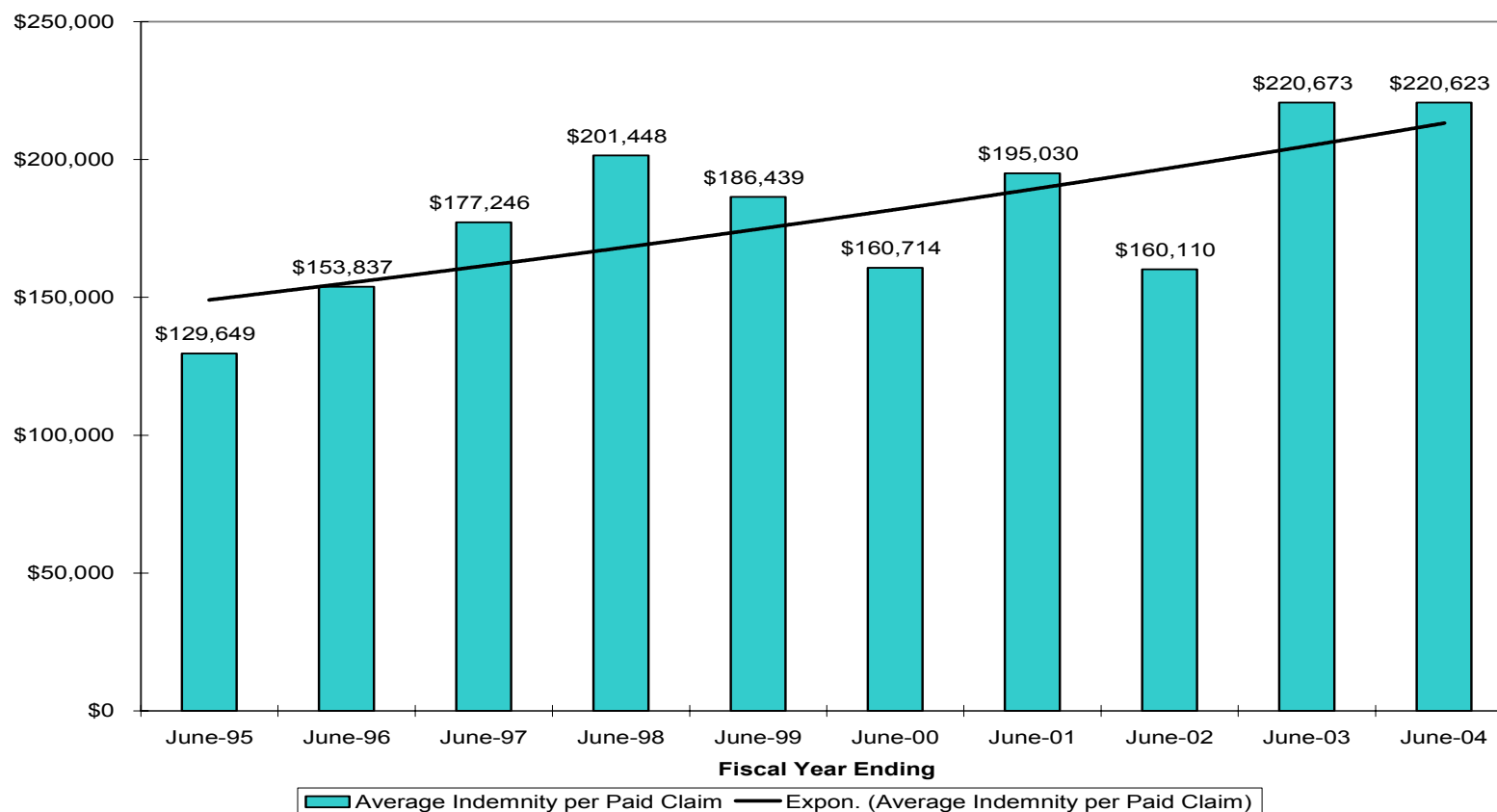
This chart shows that the total number of claims closed and the number of claims closed with paid indemnity are both rising.

Chart 3-2: Compares trends in the percentage of claims with paid indemnity to trends in the average paid indemnity.



The average indemnity per paid claim rose at an annual rate of 4.1%, but the percentage of total closed claims that resulted in an indemnity payment remained relatively stable.

Chart 3-3: Shows the average indemnity by fiscal year for paid claims.



The average indemnity payment shown on this chart understates the severity (average size) of settlements related to incidents of medical malpractice, because some claimants collect settlements from more than one physician. Due to data limitations, we cannot estimate average paid indemnity for settlements involving more than one physician. However, raw claims data do indicate that certain incidents of alleged malpractice result in more than one claim. For example, in many cases multiple claims had identical loss dates, notice dates, and closed dates, strongly suggesting that the claims arose from the same malpractice incident.

## Analysis of Claims Closed with Paid Indemnity by Size of Loss

Table 4 shows claims sorted by range of paid indemnity.

<b>FY 1995-1999: Range of Paid Indemnity</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
\$0.01 to \$100,000	801	67.3%	\$24,887,702	12.2%	\$31,071
>\$100,000 to \$200,000	129	10.8%	\$19,931,441	9.8%	\$154,507
>\$200,000 to \$300,000	68	5.7%	\$17,100,695	8.4%	\$251,481
>\$300,000 to \$400,000	45	3.8%	\$15,726,614	7.7%	\$349,480
>\$400,000 to \$500,000	35	2.9%	\$16,477,690	8.1%	\$470,791
>\$500,000 to \$600,000	19	1.6%	\$10,940,624	5.4%	\$575,822
>\$600,000 to \$700,000	16	1.3%	\$10,557,082	5.2%	\$659,818
>\$700,000 to \$800,000	16	1.3%	\$12,067,623	5.9%	\$754,226
>\$800,000 to \$900,000	9	0.8%	\$7,722,000	3.8%	\$858,000
>\$900,000 to \$1,000,000	32	2.7%	\$31,802,765	15.6%	\$993,836
Over \$1 Million	20	1.7%	\$36,809,933	18.0%	\$1,840,497
<b>Total Paid Claims</b>	<b>1,190</b>	<b>100%</b>	<b>\$204,024,169</b>	<b>100%</b>	<b>\$171,449</b>

<b>FY 2000-2004: Range of Paid Indemnity</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
\$0.01 to \$100,000	980	63.3%	\$28,540,832	9.6%	\$29,123
>\$100,000 to \$200,000	179	11.6%	\$28,041,778	9.5%	\$156,658
>\$200,000 to \$300,000	122	7.9%	\$30,934,745	10.5%	\$253,563
>\$300,000 to \$400,000	66	4.3%	\$24,030,284	8.1%	\$364,095
>\$400,000 to \$500,000	58	3.7%	\$27,755,738	9.4%	\$478,547
>\$500,000 to \$600,000	16	1.0%	\$9,186,366	3.1%	\$574,148
>\$600,000 to \$700,000	17	1.1%	\$11,316,000	3.8%	\$665,647
>\$700,000 to \$800,000	21	1.4%	\$15,756,844	5.3%	\$750,326
>\$800,000 to \$900,000	8	0.5%	\$7,056,750	2.4%	\$882,094
>\$900,000 to \$1,000,000	56	3.6%	\$55,603,223	18.8%	\$992,915
Over \$1 Million	24	1.6%	\$57,550,273	19.5%	\$2,397,928
<b>Total Paid Claims</b>	<b>1,547</b>	<b>100%</b>	<b>\$295,772,834</b>	<b>100%</b>	<b>\$191,191</b>



In Table 4, above, data are segmented into two five-year periods because there are comparatively few claims in the higher paid indemnity ranges, so a yearly analysis would reveal very little about settlement patterns. The percentage of claims in each paid indemnity range was comparable between the two periods.

When claims are sorted by range of paid indemnity, average paid indemnity has little meaning except for claims over \$1 million, because average paid indemnity is based on the same size-of-loss range in both periods. Average paid indemnity for claims over \$1 million increased by about 30% when the two periods are compared. The percentage of total paid indemnity did shift toward the higher ranges in the most recent five-year period, but this shift was not dramatic.

Claims over \$1 million remained a small percentage of total claims and a comparable percent of total paid indemnity over both periods. The change in the percentage of total paid indemnity for claims over \$1 million was comparatively small (18% to 19.5%) because the percentage of total paid claims in this range actually went down (1.7% to 1.6%).

Chart 4-1: Compares the distribution of claim counts by range of paid indemnity for the two five-year periods.

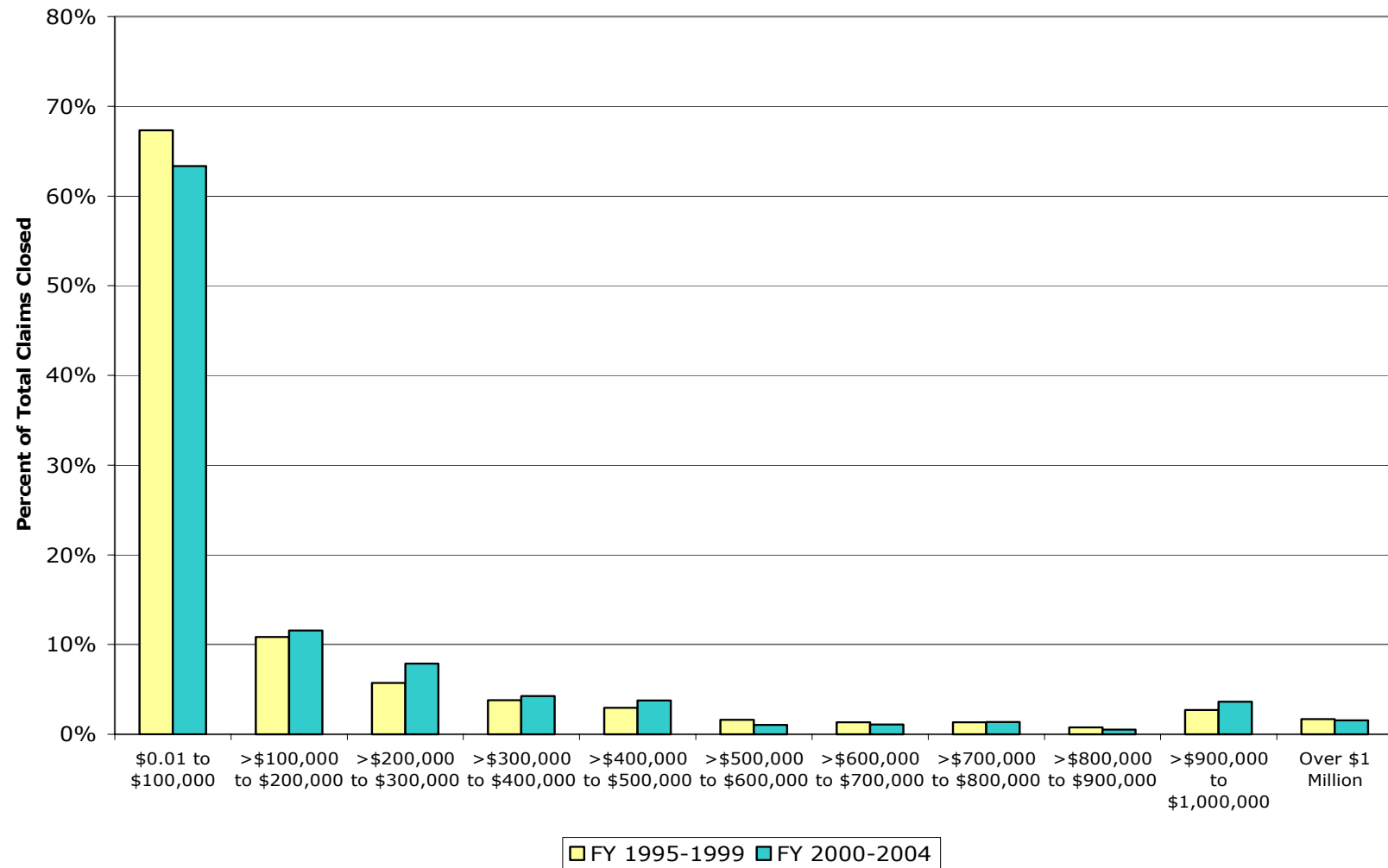


Table 5 shows paid indemnity claims sorted into two claim-size groups: Up to \$500,000 and over \$500,000.

	<b>Paid Indemnity</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
FY 1995-1999:	\$0.01 to \$500,000	1,078	90.6%	\$94,124,142	46.1%	\$87,314
	Over \$500,000	112	9.4%	\$109,900,027	53.9%	\$981,250
		1,190	100%	\$204,024,169	100%	\$171,449
FY 2000-2004:	\$0.01 to \$500,000	1,405	90.8%	\$139,303,377	47.1%	\$99,148
	Over \$500,000	142	9.2%	\$156,469,457	52.9%	\$1,101,898
		1,547	100%	\$295,772,834	100%	\$191,191
<b>FY 1995-2004 Total:</b>		<b>2,737</b>		<b>\$499,797,004</b>		<b>182,608</b>

This table displays very consistent results. During both five-year periods, the greatest percentage of claims fell in the paid indemnity range of \$0.01 to \$500,000. Both the percentage of claims with paid indemnity and the percentage of total paid indemnity were very consistent. When the two periods are compared, the biggest factor affecting total paid indemnity is the number of paid claims. When comparing the second five-year period to the first, total paid indemnity increased by 45.0%, based on a combination of these factors:

- The total number of claims increased by 30%.
- Average paid indemnity increased by 11.5%.

## Duration of Claims with Paid Indemnity

Table 6 shows indemnity payments sorted according to the length of time between the notice date and the date the claim was closed.

<b>FY 1995-2004: Notice Date to Closed Date</b>	<b>Total Number of Closed Claims</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Indemnity Payment</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
0-12 Months	3,838	859	22.4%	\$47,796,660	9.6%	\$55,642
12-24 Months	3,501	893	25.5%	\$198,154,460	39.6%	\$221,897
24-36 Months	1,409	510	36.2%	\$130,934,551	26.2%	\$256,734
36-48 Months	709	254	35.8%	\$56,700,380	11.3%	\$223,230
48-60 Months	391	144	36.8%	\$44,054,871	8.8%	\$305,937
60-72 Months	134	53	39.6%	\$13,768,082	2.8%	\$259,775
Over 72 Months	91	24	26.4%	\$8,388,000	1.7%	\$349,500
<b>Total</b>	<b>10,073</b>	<b>2,737</b>	<b>27.2%</b>	<b>\$499,797,004</b>	<b>100%</b>	<b>\$182,608</b>

Most claims are closed with in the first three years (36 months) after the insurer was notified of the injury. Overall, claims closed within three years months represent:

- 86.8% of the total claims.
- 82.6% of the claims with paid indemnity.
- 75.4% of the total paid indemnity

This table shows the value of claims-made policies to insurers covering long tail lines. Under a claims-made policy, the claim for injury must be made during the policy period. This table shows that the insurers were able to close most claims within a reasonable period of time after they were notified of the injury.

This table also puts the closure patterns of claims into context. Data are sorted based on the fiscal year in which the claim was closed. For the entire group of 10,073 claims analyzed, the average length of time between the date of loss and the date the claim was closed is 3.1 years. The oldest claim which was closed in FY 2004 had a loss date in FY 1986 and was reported in FY 2000. Data in this report provide a historical look at the cost of events that in many cases occurred years ago.

Chart 6-1: Compares total paid indemnity to average paid indemnity based on the length of time from notice date to date closed.

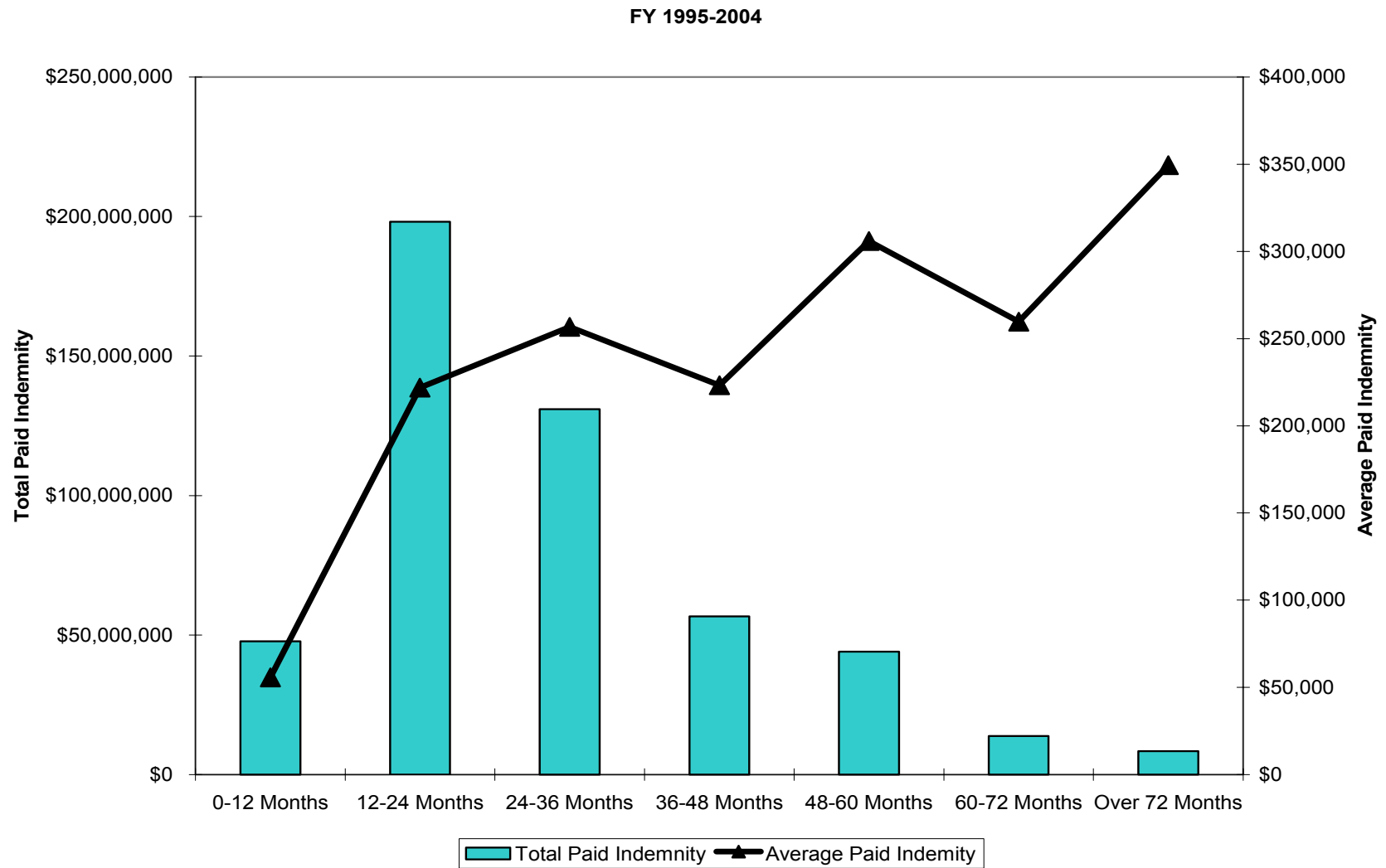


Table 7 shows indemnity payments sorted according to the length of time between the notice date and the date the claim was closed, organized into two five-year periods.

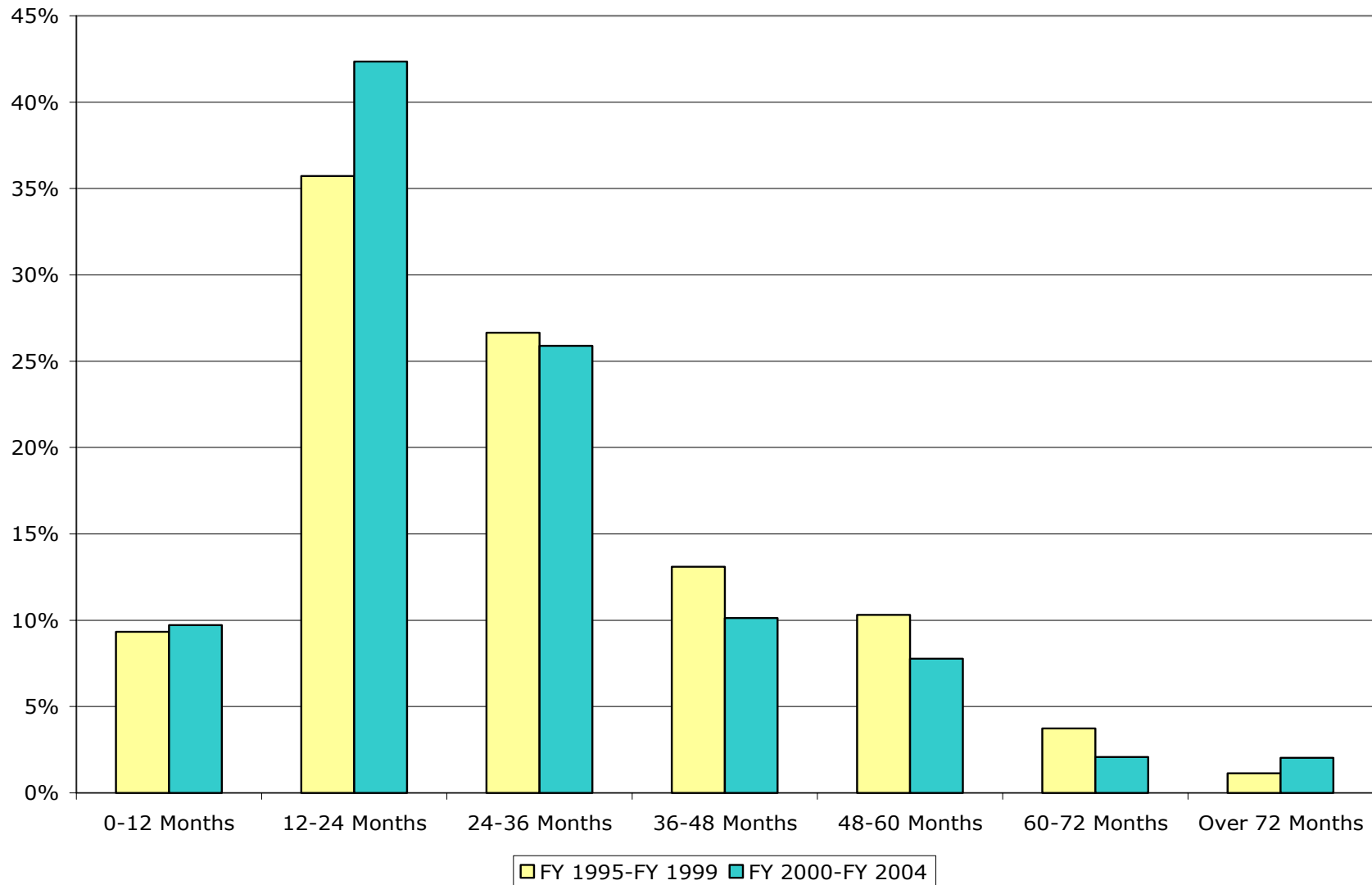
<b>FY 1995-1999: Notice Date to Closed Date</b>	<b>Total Number of Closed Claims</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Indemnity Payment</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
0-12 Months	1,404	343	24.4%	\$19,034,631	9.3%	\$55,495
12-24 Months	1,848	400	21.6%	\$72,889,565	35.7%	\$182,224
24-36 Months	712	240	33.7%	\$54,368,653	26.6%	\$226,536
36-48 Months	357	108	30.3%	\$26,730,818	13.1%	\$247,508
48-60 Months	174	65	37.4%	\$21,047,300	10.3%	\$323,805
60-72 Months	61	28	45.9%	\$7,614,703	3.7%	\$271,954
Over 72 Months	27	6	22.2%	\$2,338,500	1.1%	\$389,750
<b>Total</b>	<b>4,583</b>	<b>1,190</b>	<b>26.0%</b>	<b>\$204,024,169</b>	<b>100%</b>	<b>\$171,449</b>

<b>FY 2000-2004: Notice Date to Closed Date</b>	<b>Total Number of Closed Claims</b>	<b>Number of Claims with Paid Indemnity</b>	<b>Percent of Claims with Indemnity Payment</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Indemnity</b>
0-12 Months	2,434	516	21.2%	\$28,762,029	9.7%	\$55,740
12-24 Months	1,653	493	29.8%	\$125,264,895	42.4%	\$254,087
24-36 Months	697	270	38.7%	\$76,565,898	25.9%	\$283,577
36-48 Months	352	146	41.5%	\$29,969,562	10.1%	\$205,271
48-60 Months	217	79	36.4%	\$23,007,571	7.8%	\$291,235
60-72 Months	73	25	34.2%	\$6,153,379	2.1%	\$246,135
Over 72 Months	64	18	28.1%	\$6,049,500	2.0%	\$336,083
<b>Total</b>	<b>5,490</b>	<b>1,547</b>	<b>28.2%</b>	<b>\$295,772,834</b>	<b>100%</b>	<b>\$191,191</b>

Data were segmented by five-year periods to determine whether any changes had occurred in settlement patterns. Table 7 shows that:

- The insurers paid a greater percentage of total paid indemnity to close claims in the first 36 months during FY 2000-2004 than during the prior period. In FY 1995-1999, 71.7% of total paid indemnity was paid in the first 36 months from date of notice, as compared to 78.0 % in FY 2000-2004.
- In both periods, the insurers closed about 83% of the claims with paid indemnity in the first 36 months from the date of notice.

Chart 7-1: Shows the distribution of total paid indemnity by time from notice date to closed date for the two five-year periods.



## Analysis of Claims Closed with Defense and Cost Containment (DCC) Expenses

### Comparison of DCC Expenses

Table 8 compares claims closed with DCC expenses.

Comparison of Defense & Cost Containment Expenses (DCC)								
Fiscal Year Ending	Total Number of Closed Claims	Claims without DCC Expenses	Claims with DCC Expenses	Percent of Claims with DCC Expenses	Average DCC, Claims w/o Paid Indemnity	Average DCC, Claims with Paid Indemnity	Average DCC Expense	Total DCC Expense
June-95	812	369	443	54.6%	\$11,894	\$22,853	\$16,297	\$7,219,699
June-96	819	325	494	60.3%	\$12,348	\$18,223	\$14,340	\$7,084,049
June-97	886	348	538	60.7%	\$12,888	\$31,769	\$18,398	\$9,898,246
June-98	960	387	573	59.7%	\$14,204	\$32,786	\$20,949	\$12,003,734
June-99	1,106	437	669	60.5%	\$17,736	\$33,844	\$22,527	\$15,070,891
June-00	1,051	413	638	60.7%	\$13,463	\$33,687	\$20,500	\$13,078,957
June-01	1,128	476	652	57.8%	\$14,552	\$37,049	\$22,247	\$14,504,810
June-02	1,213	502	711	58.6%	\$16,447	\$32,487	\$21,929	\$15,591,447
June-03	1,078	368	710	65.9%	\$18,439	\$43,989	\$26,392	\$18,738,065
June-04	1,020	313	707	69.3%	\$18,968	\$47,025	\$28,174	\$19,919,302
Total	10,073	3,938	6,135	60.9%	\$15,466	\$34,130	\$21,697	\$133,109,201

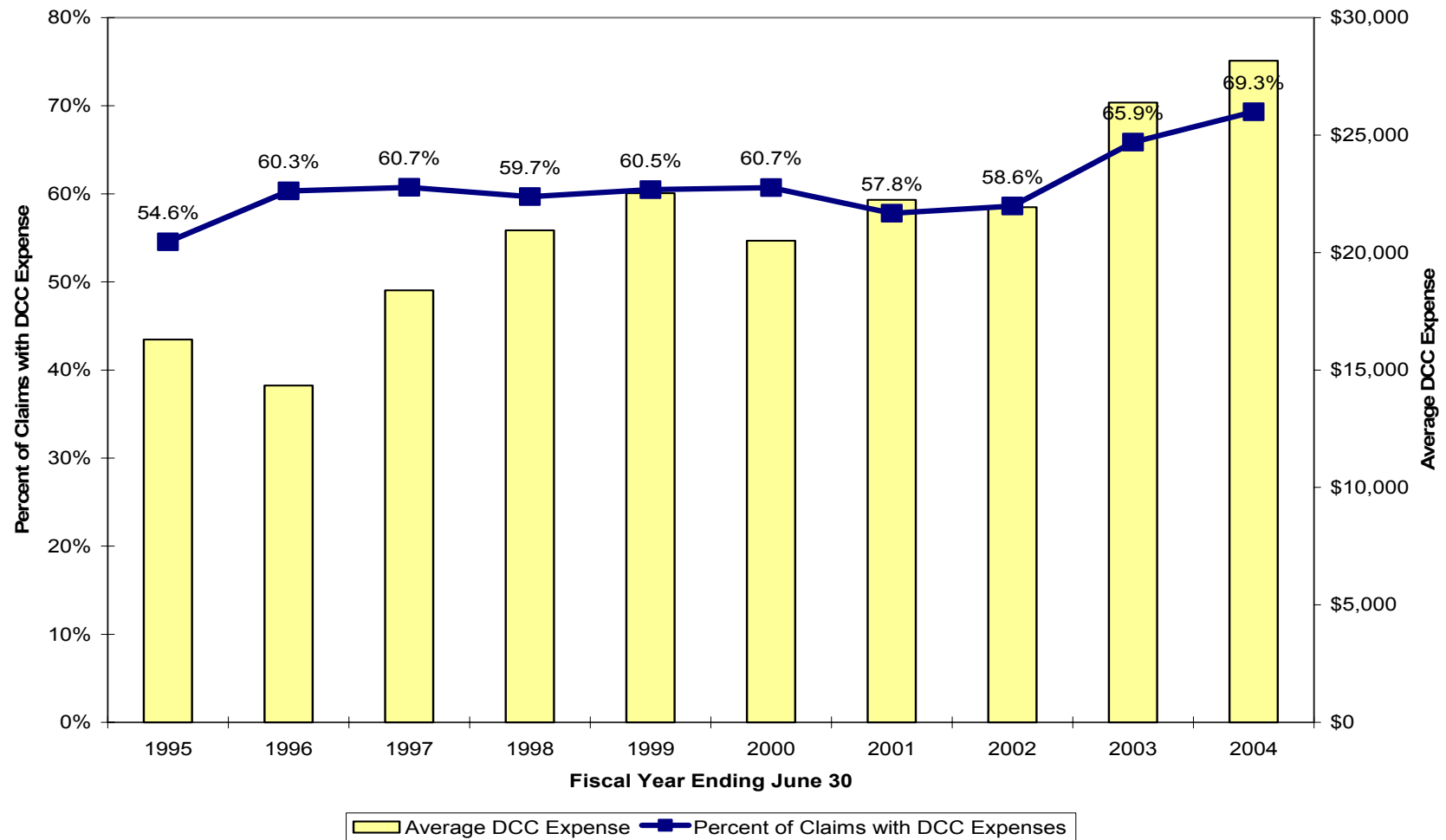
There were 10,073 medical malpractice claims closed by insurers during the ten-year period ending June 30, 2004, and 60.9% of these claims resulted in DCC expenses. The percentage of claims with DCC expense peaked at 69.3% of claims closed in the fiscal year ending June 30, 2004.

Average DCC expenses increased at an annual rate of 6.4%. The average DCC expenses of claims closed with paid indemnity rose faster – at an annual rate of 8.3%, although costs appear abnormally low in fiscal year 1996.

Total DCC expenses rose at an annual rate of 12.0% over this ten-year period. Total DCC expenses increased more rapidly than average DCC expenses did, due to a rise in the number of claims closed with DCC expenses over this period. The number of claims with DCC expenses increased at an annual rate of 5.3%.

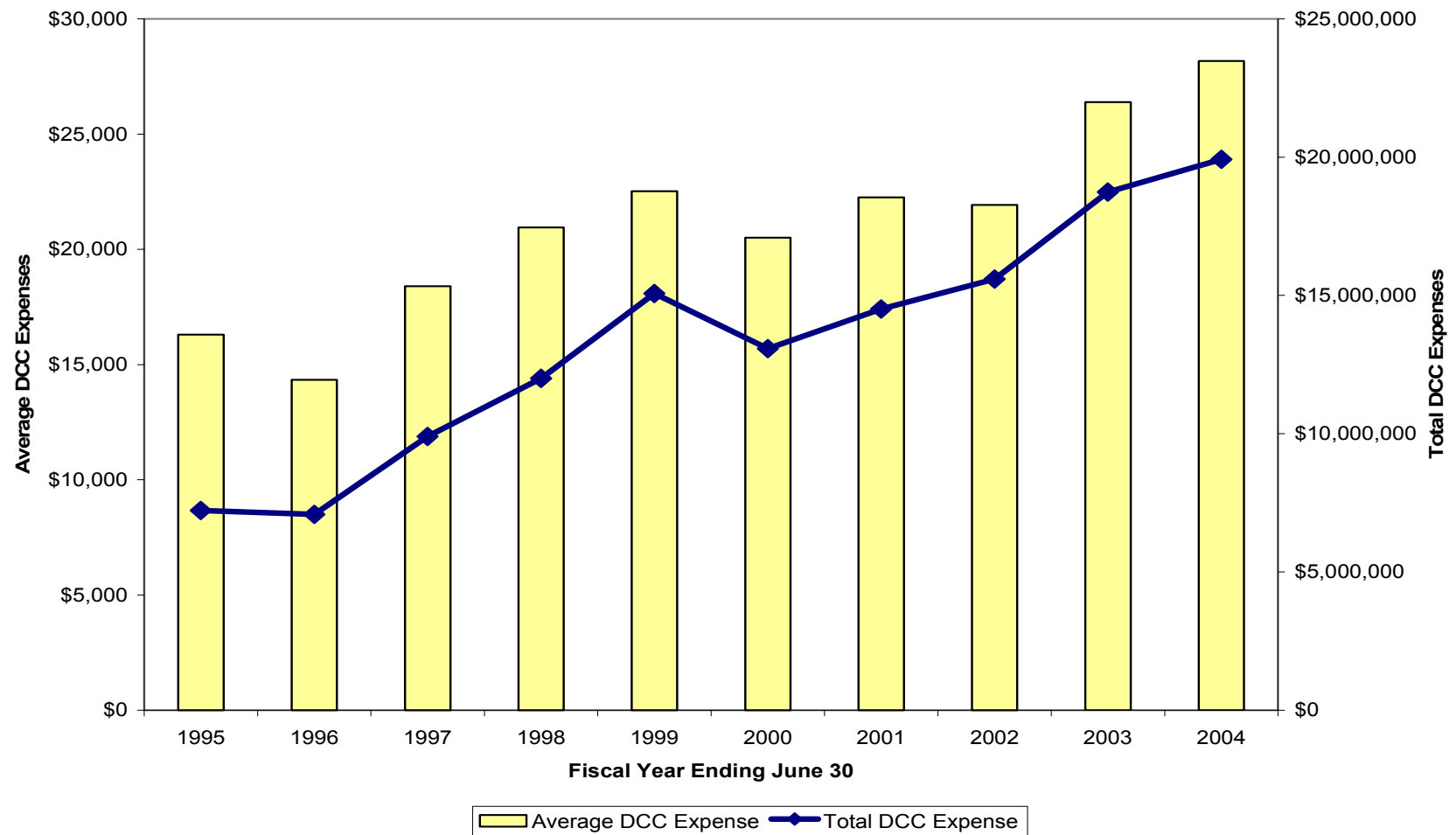


Chart 8-1: Compares trends in the percentage of claims with DCC expense to trends in the average DCC expense.



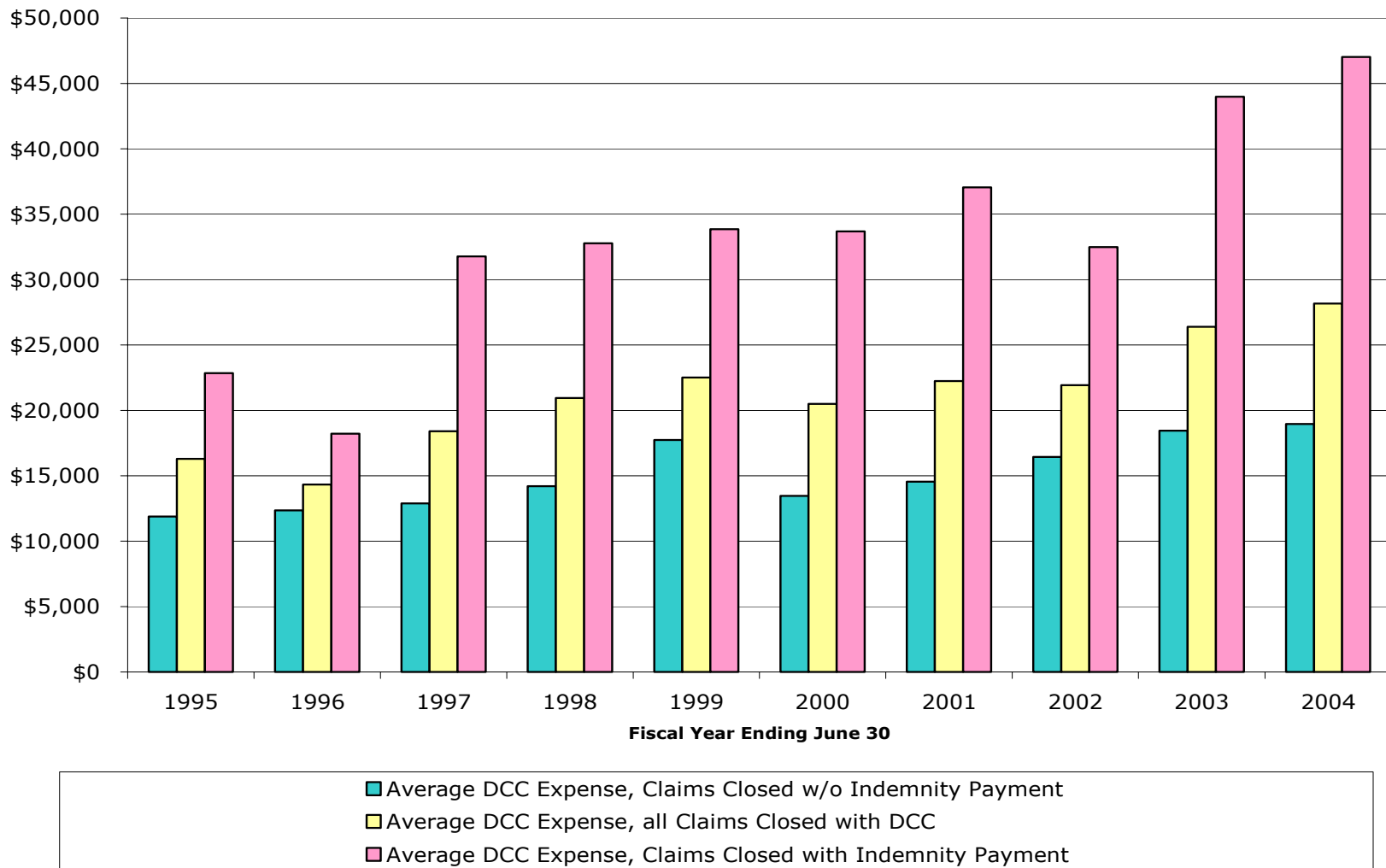
Average DCC expenses rose at an annual rate of 6.4%, but the percentage of total closed claims that resulted in DCC expenses was more stable, although it is rising over the last two fiscal years.

Chart 8-2: Compares trends in average DCC expenses to trends in total DCC expenses.



Total DCC expenses are rising faster than average DCC expense because the number of claims with DCC expenses increasing.

Chart 8-3: Compares overall average DCC expenses to DCC expenses for claims closed with and without paid indemnity.



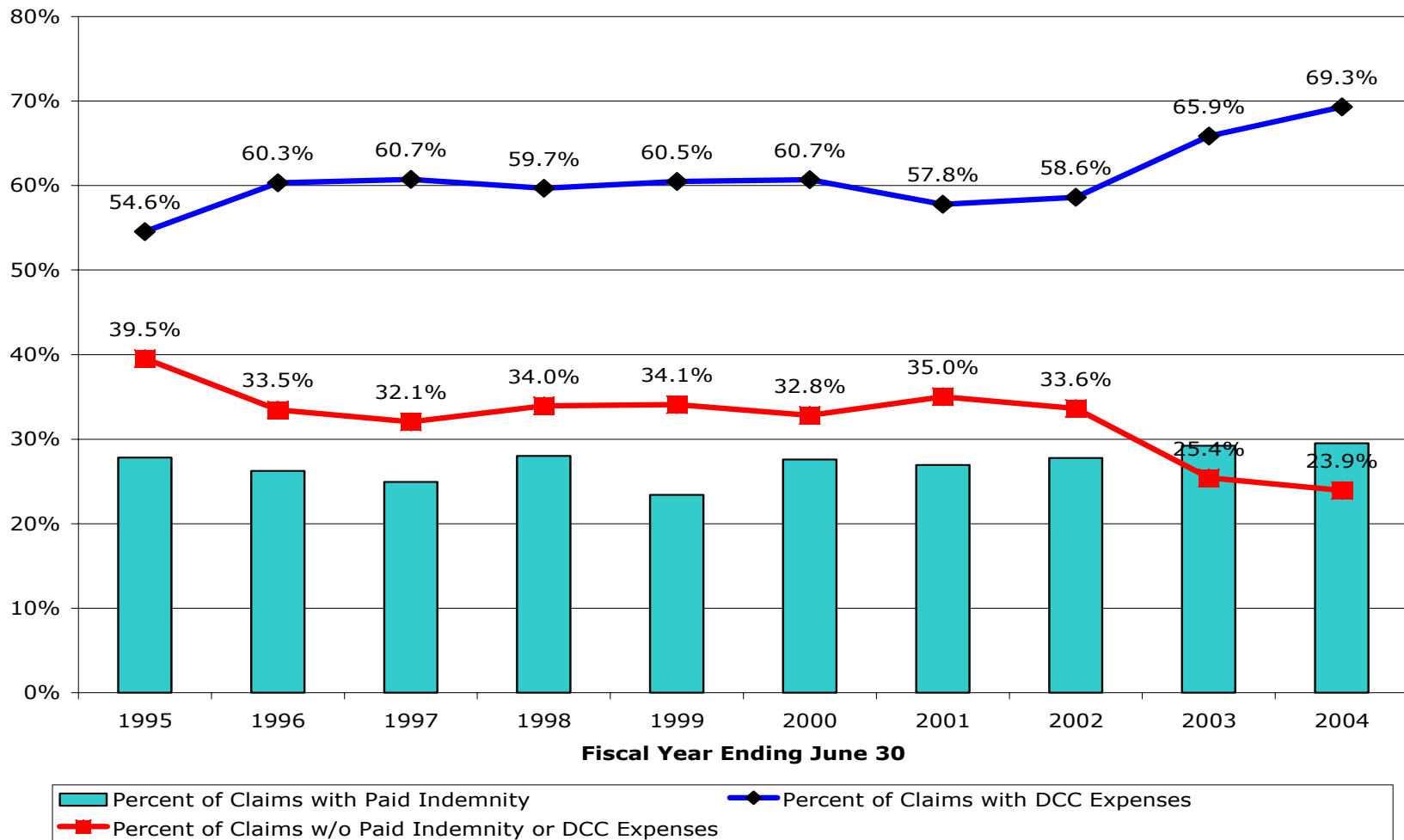
## DCC Expenses on Claims with and without Paid Indemnity

Table 9 compares DCC expenses for claims with and without paid indemnity.

<b>Defense and Cost Containment Expenses (DCC): Analysis of Claims with Paid Indemnity</b>								
<b>Fiscal Year Ending</b>	<b>Total Closed Claims</b>	<b>Claims with Paid Indemnity</b>			<b>Claims w/o Paid Indemnity</b>			<b>Percent of Claims w/o Paid Indemnity or DCC Expenses</b>
		<b>DCC Expenses</b>	<b>No DCC Expenses</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>DCC Expenses</b>	<b>No DCC Expenses</b>	<b>Percent of Claims with DCC Expenses</b>	
June-95	812	178	48	27.8%	265	321	54.6%	39.5%
June-96	819	164	51	26.3%	330	274	60.3%	33.5%
June-97	886	157	64	24.9%	381	284	60.7%	32.1%
June-98	960	208	61	28.0%	365	326	59.7%	34.0%
June-99	1,106	199	60	23.4%	470	377	60.5%	34.1%
June-00	1,051	222	68	27.6%	416	345	60.7%	32.8%
June-01	1,128	223	81	27.0%	429	395	57.8%	35.0%
June-02	1,213	243	94	27.8%	468	408	58.6%	33.6%
June-03	1,078	221	94	29.2%	489	274	65.9%	25.4%
June-04	1,020	232	69	29.5%	475	244	69.3%	23.9%
Total	10,073	2,047	690	27.2%	4,088	3,248	60.9%	32.2%

There were 10,073 medical malpractice claims closed by insurers during the ten-year period ending June 30, 2004. Less than one-third of these claims resulted in an indemnity payment, but over 60% had DCC expenses. The number of claims with both paid indemnity and DCC expenses rose at an annual rate of 4.3%. In comparison, the number of claims with only DCC expenses rose at a higher annual rate of 5.9%. Based on these trends, it is not surprising that the percentage of claims closed without either paid indemnity or DCC expenses dropped over the ten-year period.

Chart 9-1: Compares trends in the percentage of claims with paid indemnity to trends in the percentage of claims with and without DCC expenses.



The percentage of claims with DCC expenses is rising, regardless of whether a claim results in an indemnity payment.

## Analysis of Claims Closed with Defense and Cost Containment (DCC) Expenses by Size of Loss

Table 10 shows claims sorted by range of paid indemnity.

<b>FY 1995-1999: Range of Paid Indemnity</b>	<b>Number of Claims with DCC Expenses</b>	<b>Percent of Claims with DCC Expense</b>	<b>Total DCC Expense</b>	<b>Percent of Total DCC Expense</b>	<b>Average DCC Expense</b>
\$0	1,811	66.7%	\$25,657,367	50.0%	\$14,168
\$0.01 to \$100,000	526	19.4%	\$8,747,366	17.1%	\$16,630
> \$100,000 to \$200,000	125	4.6%	\$4,039,506	7.9%	\$32,316
> \$200,000 to \$300,000	67	2.5%	\$2,391,157	4.7%	\$35,689
> \$300,000 to \$400,000	45	1.7%	\$1,446,922	2.8%	\$32,154
> \$400,000 to \$500,000	33	1.2%	\$1,772,421	3.5%	\$53,710
> \$500,000 to \$600,000	19	0.7%	\$848,983	1.7%	\$44,683
> \$600,000 to \$700,000	16	0.6%	\$403,961	0.8%	\$25,248
> \$700,000 to \$800,000	16	0.6%	\$451,732	0.9%	\$28,233
> \$800,000 to \$900,000	8	0.3%	\$263,176	0.5%	\$32,897
> \$900,000 to \$1,000,000	31	1.1%	\$2,870,587	5.6%	\$92,600
Over \$1 Million	20	0.7%	\$2,383,443	4.6%	\$119,172
<b>Total</b>	<b>2,717</b>	<b>100%</b>	<b>\$51,276,620</b>	<b>100%</b>	<b>\$18,873</b>

<b>FY 2000-2004: Range of Paid Indemnity</b>	<b>Number of Claims with DCC Expenses</b>	<b>Percent of Claims with DCC Expense</b>	<b>Total DCC Expense</b>	<b>Percent of Total DCC Expense</b>	<b>Average DCC Expense</b>
\$0	2,277	66.6%	\$37,566,588	45.9%	\$16,498
\$0.01 to \$100,000	590	17.3%	\$13,897,114	17.0%	\$23,554
> \$100,000 to \$200,000	174	5.1%	\$5,945,798	7.3%	\$34,171
> \$200,000 to \$300,000	120	3.5%	\$6,848,002	8.4%	\$57,067
> \$300,000 to \$400,000	66	1.9%	\$3,027,079	3.7%	\$45,865
> \$400,000 to \$500,000	55	1.6%	\$3,361,647	4.1%	\$61,121
> \$500,000 to \$600,000	14	0.4%	\$1,132,240	1.4%	\$80,874
> \$600,000 to \$700,000	17	0.5%	\$1,333,358	1.6%	\$78,433
> \$700,000 to \$800,000	20	0.6%	\$1,068,656	1.3%	\$53,433
> \$800,000 to \$900,000	7	0.2%	\$246,620	0.3%	\$35,231
> \$900,000 to \$1,000,000	55	1.6%	\$4,097,021	5.0%	\$74,491
Over \$1 Million	23	0.7%	\$3,308,460	4.0%	\$143,846
<b>Total</b>	<b>3,418</b>	<b>100%</b>	<b>\$81,832,582</b>	<b>100%</b>	<b>\$23,942</b>

Data are segmented into two five-year periods because there are comparatively few claims in the higher paid indemnity ranges, so a yearly analysis would reveal very little about settlement patterns.

Table 10 shows that the percentages of claims in each range of paid indemnity were very comparable in the two five-year periods. This table also shows that the insurers that participated in the study spent the largest proportion of DCC expenses on claims for which no indemnity payment was ultimately made.

The average DDC expense fluctuated in the various ranges of paid indemnity, so no meaningful conclusion can be drawn. Average paid indemnity increased in the segment containing claims over \$1 million by about 21% when the two periods are compared. However, the percentage of total DCC expenses in that range actually went down in the later period (from 4.6% to 4.0%).

Chart 10-1: Compares the distribution of total DCC expenses by range of paid indemnity for the two five-year periods.

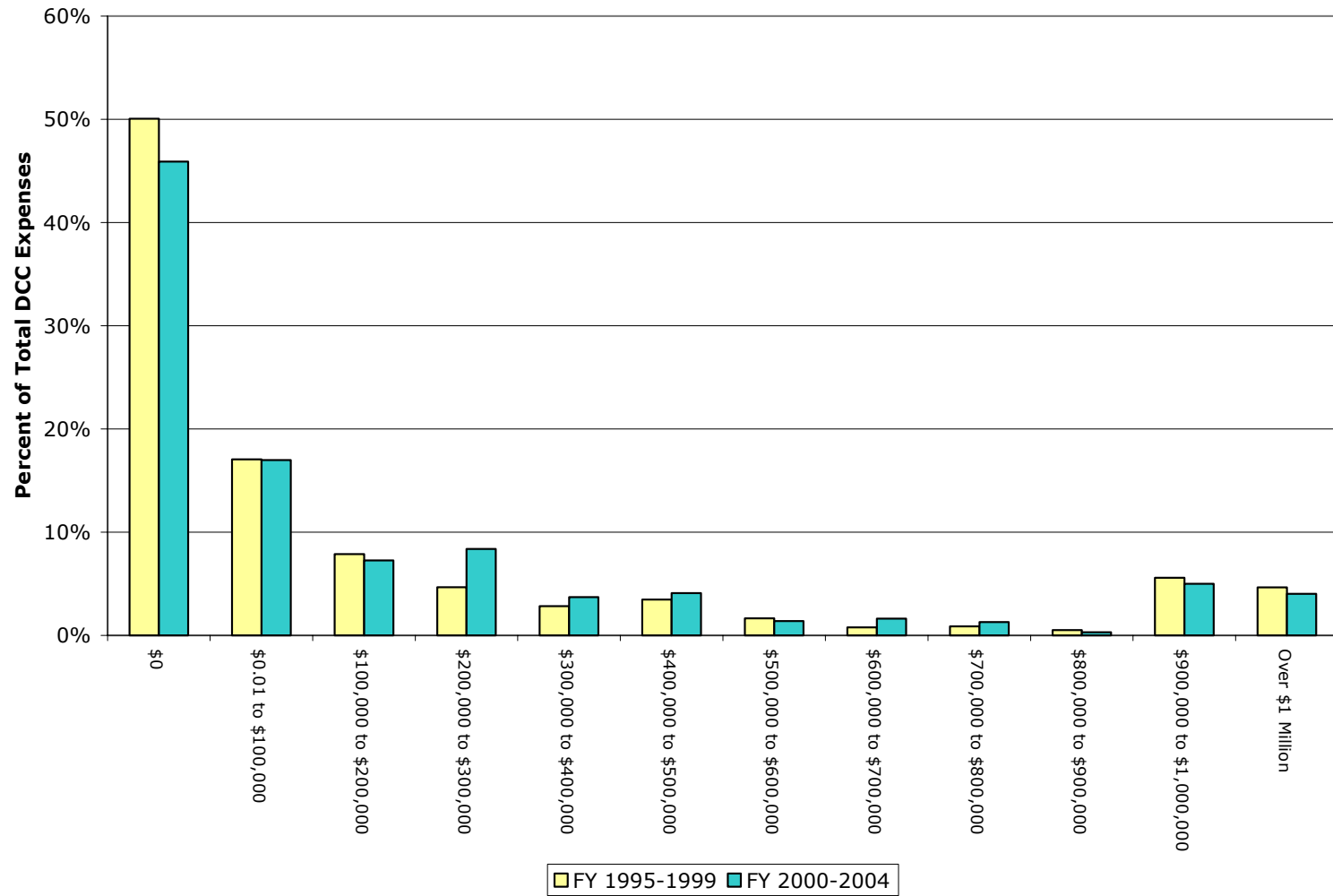




Chart 10-2: Compares the distribution of claim counts for claims with DCC expenses by range of paid indemnity for the two five-year periods.

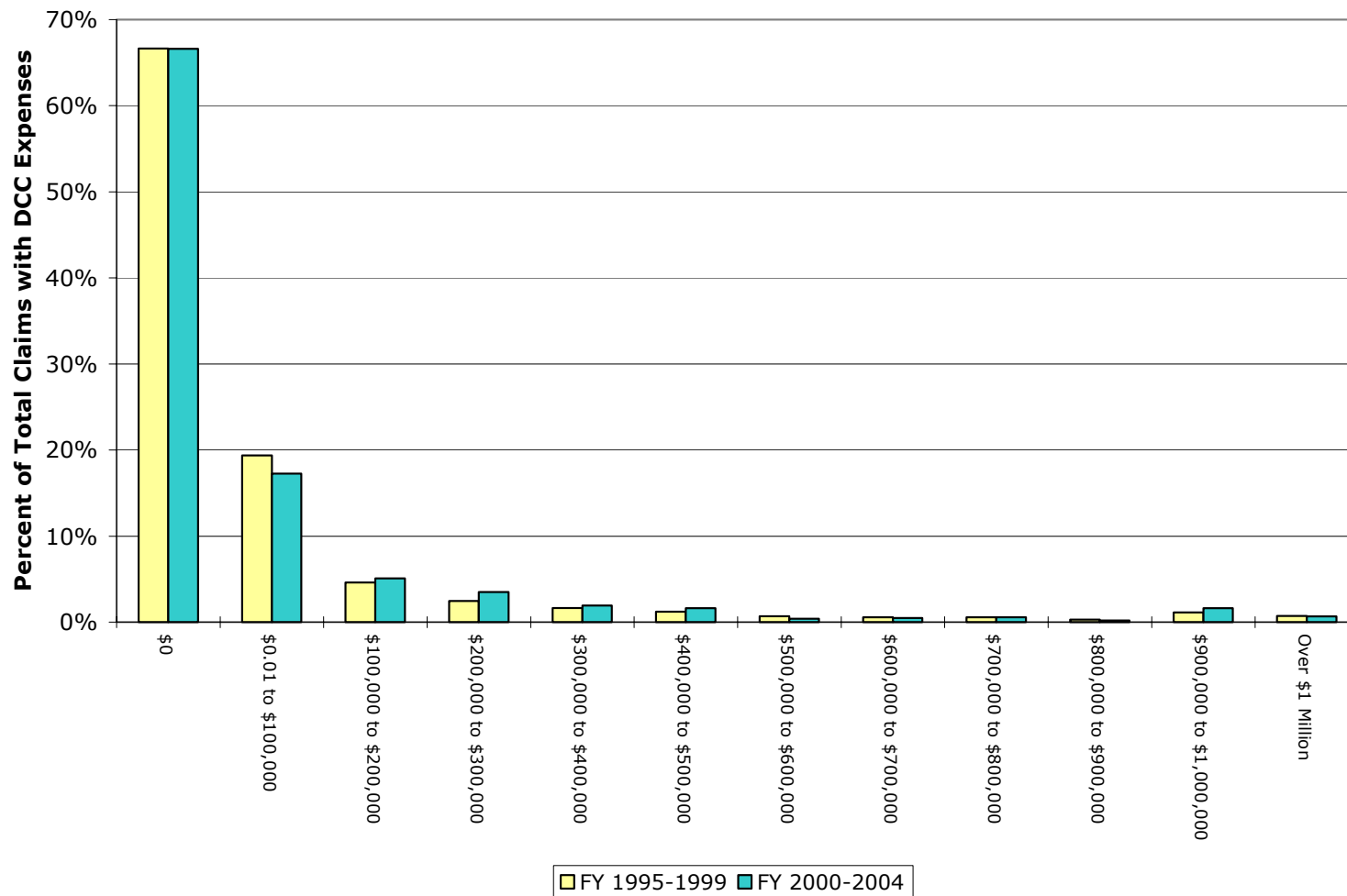


Table 11 shows claims with DCC expenses claims sorted by size of paid indemnity: Up to \$500,000 and over \$500,000.

	<b>Paid Indemnity</b>	<b>Number of Claims with DCC Expenses</b>	<b>Percent of Claims with DCC Expense</b>	<b>Total DCC Expense</b>	<b>Percent of Total DCC Expense</b>	<b>Average DCC Expense</b>
FY 1995-1999	\$0 to \$500,000	2,607	96.0%	\$44,054,739	85.9%	\$16,899
	Over \$500,000	110	4.0%	\$7,221,881	14.1%	\$65,653
		2,717	100%	\$51,276,620	100%	\$18,873
FY 2000-2004	\$0 to \$500,000	3,282	96.0%	\$70,646,228	86.3%	\$21,525
	Over \$500,000	136	4.0%	\$11,186,354	13.7%	\$82,253
		3,418	100%	\$81,832,582	100%	\$23,942
<b>FY 1995-2004 Total:</b>		<b>6,135</b>		<b>133,109,201</b>		<b>\$21,697</b>

This table produced very consistent results. During both five-year periods, the greatest percentage of claims fell in the range of paid indemnity between \$0 and \$500,000. Both the percentage of claims with DCC expenses and the percentage of total DCC expense were very consistent. When the two periods are compared, both the number of claims with DCC expense and the average DCC expense affected total DCC expense. When comparing the second five-year period to the first, total DCC expense increased by 59.6%, based on a combination of these factors:

- The total number of claims with DCC expense increased by 25.8%.
- Average DCC expense increased by 26.9%.

## Analysis by Type of Settlement

Table 12(a) shows claims with paid indemnity by type of settlement.

<b>Settlement Type</b>	<b>Claims Closed with Paid Indemnity</b>	<b>Percent of Claims with Paid Indemnity</b>	<b>Total Paid Indemnity</b>	<b>Percent of Total Paid Indemnity</b>	<b>Average Paid Idemnity</b>
Arbitration	16	0.6%	\$2,440,474	0.5%	\$152,530
Defense Verdict/Dismissal	17	0.6%	\$1,878,451	0.4%	\$110,497
Mediation	394	14.4%	\$126,264,378	25.3%	\$320,468
Other	131	4.8%	\$469,609	0.1%	\$3,585
Plaintiff did not Pursue Claim	48	1.8%	\$649,312	0.1%	\$13,527
Plaintiff Verdict	50	1.8%	\$34,829,651	7.0%	\$696,593
Private Trial	35	1.3%	\$7,723,450	1.5%	\$220,670
Settled by Negotiation	2,046	74.8%	\$325,541,679	65.1%	\$159,111
<b>Total</b>	<b>2,737</b>	<b>100.0%</b>	<b>\$499,797,004</b>	<b>100.0%</b>	<b>\$182,608</b>

This table shows that most claims are settled by negotiation, comprising 74.8% of the settlements and 65.1% of the total paid indemnity.

Claims settled by plaintiff verdict comprise a very number of paid claims. Claims settled by plaintiff verdict comprise 1.8% of paid claims, and result in 7.0% of the total paid indemnity.

Chart 12-1 shows a comparison of the percentage of the number of claims with paid indemnity to percentage of the total paid indemnity. Chart 12-2 combines data from Tables 12(a) and (b) to draw comparisons between paid indemnity and DCC expenses.

Table 12(b) shows claims with DCC expenses by type of settlement.

<b>Settlement Type</b>	<b>Claims Closed with DCC Expense</b>	<b>Percent of Claims with DCC Expense</b>	<b>Total DCC Expense</b>	<b>Percent of Total DCC Expense</b>	<b>Average DCC Expense</b>
Arbitration	36	0.6%	\$1,311,885	1.0%	\$36,441
Defense Verdict/Dismissal	695	11.3%	\$34,168,876	25.7%	\$49,164
Mediation	400	6.5%	\$14,060,087	10.6%	\$35,150
Other	927	15.1%	\$2,251,853	1.7%	\$2,429
Plaintiff did not Pursue Claim	1,914	31.2%	\$19,037,039	14.3%	\$9,946
Plaintiff Verdict	53	0.9%	\$8,114,837	6.1%	\$153,110
Private Trial	54	0.9%	\$5,399,221	4.1%	\$99,986
Settled by Negotiation	1,576	25.7%	\$41,317,432	31.0%	\$26,217
Summary Judgement for Defense	480	7.8%	\$7,447,972	5.6%	\$15,517
<b>Total</b>	<b>6,135</b>	<b>100.0%</b>	<b>\$133,109,201</b>	<b>100.0%</b>	<b>\$21,697</b>

DCC expense data show the greatest percent of total DCC expense is paid is paid for claims when:

- The insurer settles the claim by negotiation.
- The insurer receives a verdict for the defense or has the claim dismissed.
- The plaintiff does not pursue the claim.

Average DCC expenses are highest when there is a plaintiff verdict and when there is a private trial - which is a form of alternative dispute resolution involving a judge.

Chart 12-1: Compares the percentage of claims with paid indemnity to the percentage of total paid indemnity.

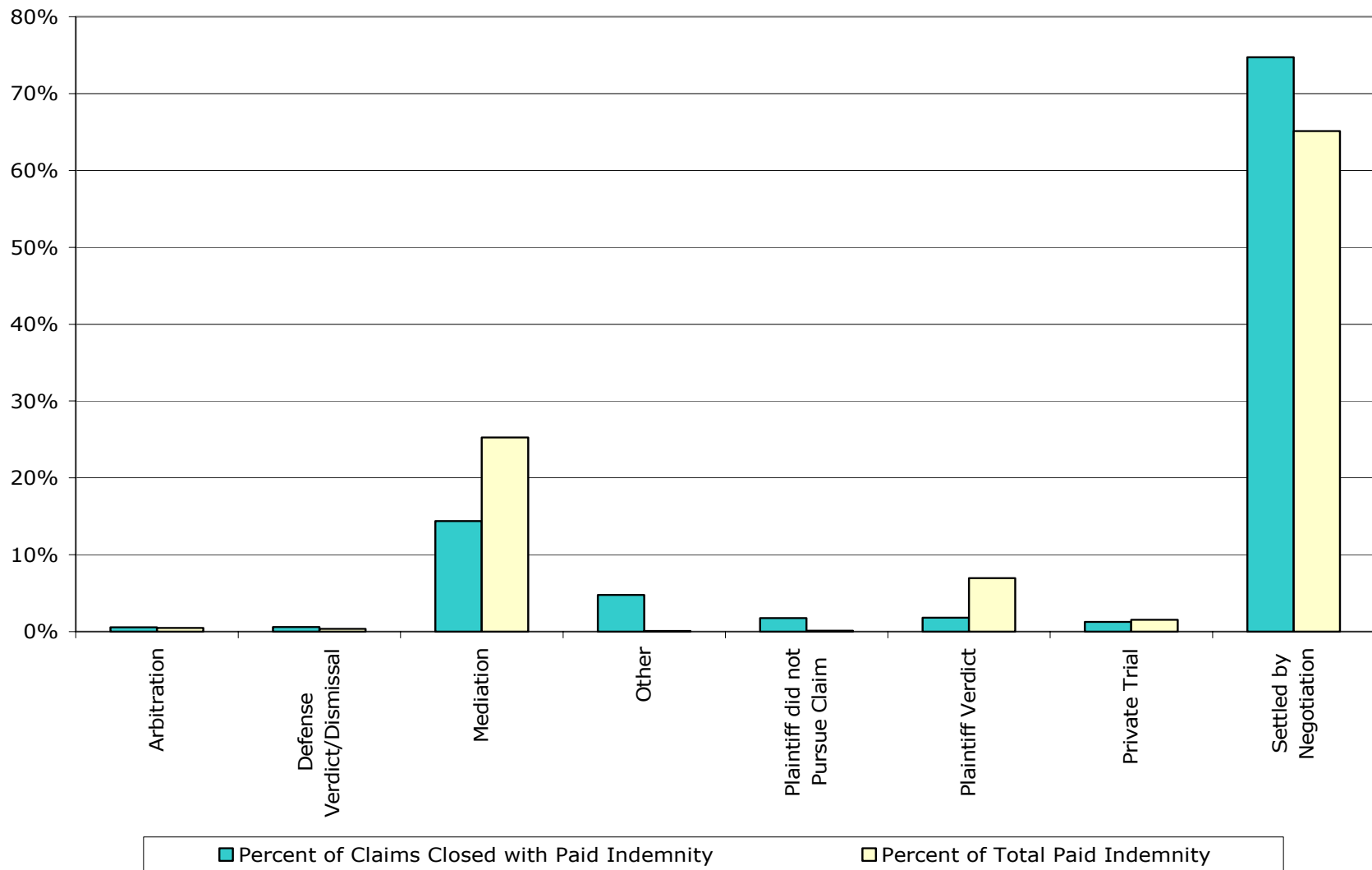
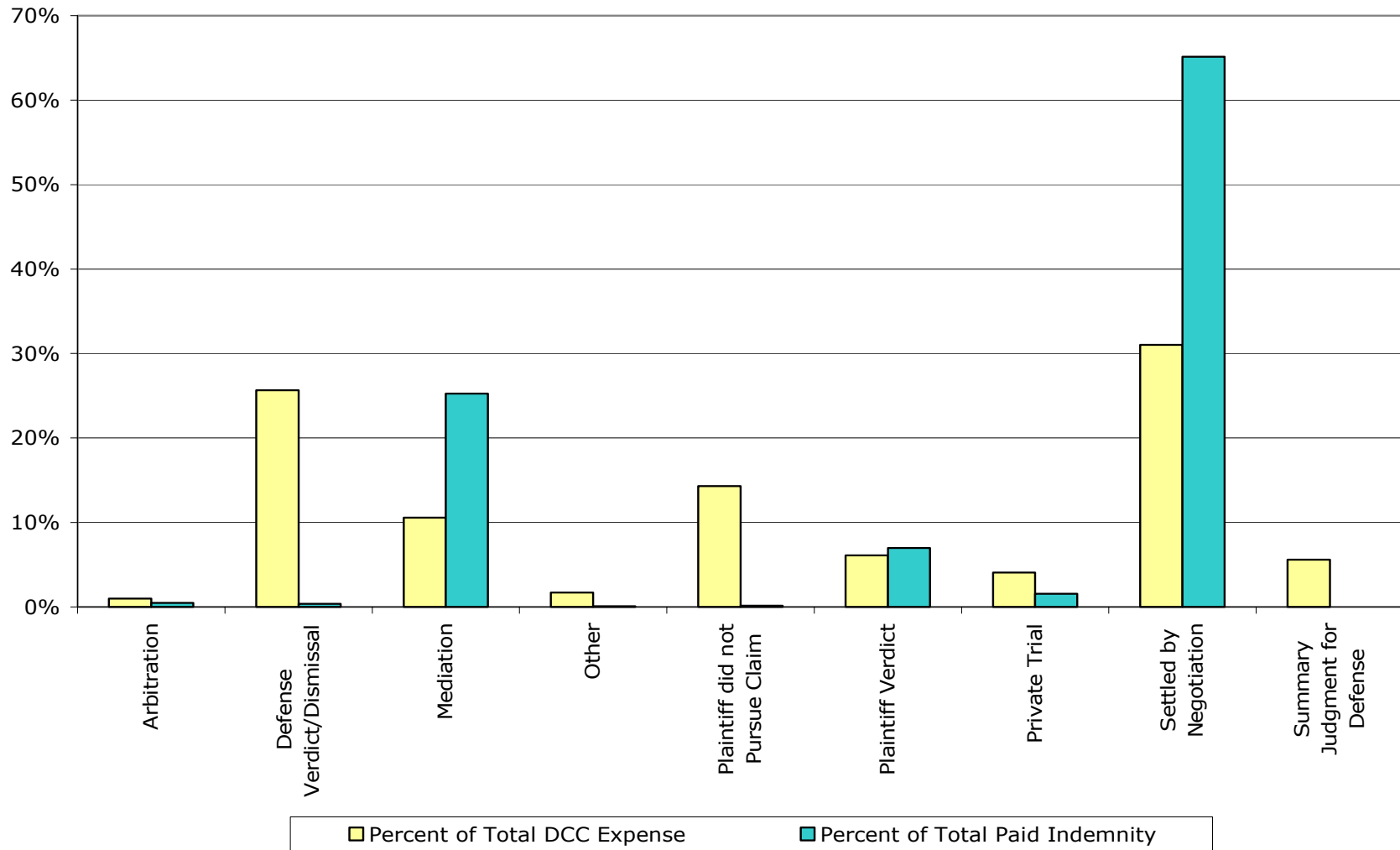


Chart 12-2 shows the percentage of total DCC expenses and percentage of paid indemnity by type of settlement.



## Analysis of Claims Closed by Type of Medical Provider

Table 13(a) lists provider categories for which total paid indemnity exceeds \$2 million over ten years.

<b>Paid Indemnity by Specialty: Specialties with over \$2 Million Paid over 10 Years</b>			
<b>Specialty</b>	<b>FY 1995-1999</b>	<b>FY 2000-2004</b>	<b>Total</b>
All Other	\$28,550,117	\$80,540,509	\$109,090,625
Obstetrics-Gynecology Surgery	\$30,734,265	\$29,723,239	\$60,457,504
General Surgery	\$24,235,738	\$17,470,070	\$41,705,808
Family/General Practitioners (Minor Surgery Incl. OB)	\$14,224,471	\$17,575,667	\$31,800,138
Orthopedic Surgery	\$14,527,917	\$16,483,385	\$31,011,302
Anesthesiology	\$8,332,515	\$16,499,243	\$24,831,758
Radiology (Diagnostic) Minor or No Surgery	\$10,257,527	\$12,005,144	\$22,262,670
Neurology Surgery (Incl. Child)	\$13,072,181	\$8,130,162	\$21,202,343
Family/General Practitioners (Minor or No Surgery - No OB)	\$4,748,538	\$14,431,634	\$19,180,172
Emergency Medicine (No Major Surgery)	\$6,036,095	\$11,955,364	\$17,991,459
Internal Medicine (Minor or No Surgery)	\$5,550,881	\$11,818,659	\$17,369,540
Plastic Surgery	\$4,126,530	\$4,917,020	\$9,043,550
Urological Surgery	\$3,789,415	\$3,943,946	\$7,733,362
Plastic Surgery (Otorhinolaryngology)	\$1,975,968	\$4,295,810	\$6,271,778
Pathology (Minor or No Surgery)	\$4,267,518	\$1,725,000	\$5,992,518
Neurology (Minor or No Surgery)	\$2,175,933	\$3,240,500	\$5,416,433
Allergy/Immunology	\$307,500	\$5,065,000	\$5,372,500
Gastroenterology (Minor or No Surgery)	\$3,380,992	\$1,967,910	\$5,348,902
Otorhinolaryngology Surgery	\$3,007,500	\$2,091,363	\$5,098,863
Pediatrics (Minor or No Surgery)	\$2,561,934	\$2,289,655	\$4,851,589
Ophthalmology Surgery	\$1,693,878	\$3,053,441	\$4,747,319
Gynecology Surgery	\$1,875,999	\$2,544,500	\$4,420,499
Cardiovascular Disease (Minor or No Surgery)	\$359,000	\$4,000,000	\$4,359,000
Dermatology - All	\$2,533,688	\$1,101,499	\$3,635,187
Neoplastic Diseases (Minor or No Surgery)	\$1,965,000	\$1,447,087	\$3,412,087
Physicians (Minor Surgery)	\$700,000	\$2,674,778	\$3,374,778
Radiopaque Dye Injections	\$2,376,833	\$579,750	\$2,956,583
Thoracic Surgery	\$647,500	\$2,205,000	\$2,852,500
Vascular Surgery	\$503,849	\$2,045,000	\$2,548,849
Pulmonary Diseases (No Surgery)	\$1,083,516	\$917,576	\$2,001,092

The largest paid indemnity category is “All Other,” and this category had the largest period-to-period increase when data were split into five-year segments. The size of this category may be due to improper coding when physician coverage is written in conjunction with hospital coverage. Due to apparent coding issues, it is difficult to draw conclusions from these data.

Table 13(b) lists the “Top Ten” specialty classifications sorted by total paid indemnity.

<b>"Top 10" Paid Indemnity Specialty</b>	<b>Average Paid Indemnity</b>		<b>Paid Claims</b>	
	<b>FY 1995-1999</b>	<b>FY 2000-2004</b>	<b>FY 1995-1999</b>	<b>FY 2000-2004</b>
All Other	129,773	171,728	220	469
OB/GYN Surgery	249,872	294,289	123	101
General Surgery	198,654	218,376	122	80
Family/GP (Minor Surgery & OB)	268,386	231,259	53	76
Orthopedic Surgery	126,330	160,033	115	103
Anesthesiology	72,457	95,371	115	173
Radiology (Diagnostic) Minor/No Surgery	244,227	230,868	42	52
Neurology Surgery (Incl. Child)	484,155	338,757	27	24
Family/GP (Minor/No Surgery - No OB)	115,818	229,074	41	63
Emergency Medicine (No Major Surgery)	177,532	271,713	34	44

This table shows the average paid indemnity and paid claim counts by five-year period. The largest paid claim category is “All Other,” and this category had the largest period-to-period increase when paid claims were split into five-year segments. The size of this category may be due to improper coding when physician coverage is written in conjunction with hospital coverage. Due to apparent coding issues, it is difficult to draw conclusions from these data.